

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Misc. Appeal No.240 of 2017

Shriram General Insurance Co. Ltd., 2nd Floor Jha Niwas, Opp. Hotel Yuvraj Palace, Diversion Road, Doranda, P.O. GPO, P.S. Doranda, District Ranchi through its Legal Officer Arun Kumar, S/o Dwand Bhaduray, R/o 3rd Floor, Kedar Bhawan, S.P. Verma Road, Patna, P.O. Patna, P.S. Gandhimaidan, District Patna

..... Appellant

Versus

1. Kavita, W/o Late Balram Mahato
2. Preety, D/o Late Balaram Mahato
3. Minor Animesh Kumar, S/o Late Balaram Mahato
4. Fucha Mahatain, W/o Prahlad Mahato
5. Prahlad Mahato, S/o Late Sukhlal Mahato (Deleted vide order dated 19.07.2022)

Respondent No.3 is minor and being represented through his mother appellant No.1 who has no adverse interest against him.

All resident of Village Mohubani, P.O. Ambokna, P.S. Govindpur, District Dhanbad

..... Claimants/ Opposite Parties

6. Rupa Devi, W/o S. Yadav, R/o 232/ 2 G.T. Road, P.O. & P.S. Belure Math, Howra, West Bengal

..... Opposite Party No.1/ Opposite Party No.2

CORAM:

HON'BLE MR. JUSTICE SUBHASH CHAND

For the Appellant

: Mr. Ashutosh Anand, Advocate

For the Respondents

: Mr. Saibal Kumar Laik, Advocate

C.A.V. on: 11/11/2024

Pronounced on:28/11/2024

J U D G M E N T

1. The instant Miscellaneous Appeal has been preferred against the award dated 28.11.2016 passed by the learned District Judge-III-cum-M.A.C.T., Dhanbad in Title (M.V.) Suit No. 107 of 2014, whereby the learned Tribunal has directed the appellant-Insurance Company to pay the compensation amount of Rs.1,14,52,460/- to the claimants with simple interest @ 7% per annum from the date of filing of the claim application till the realization of the amount of compensation. It is further directed to pay the compensation amount including the interest to the plaintiffs/ claimants

within 60 days from the date of the order, failing which, the claimants will be at liberty to realize the same through the process of Court and the interest @ 9% per annum shall be deducted after expiry of 60 days. It is further directed that the aforesaid amount as awarded, seventy five percent of the awarded amount shall be kept in joint name of the claimants under fixed deposit scheme for the term of five years in a Nationalized Bank and remaining twenty five percent of the awarded amount be kept in joint name of the claimants in saving account.

2. The brief facts leading to this miscellaneous appeal are that the deceased Balaram Mahato along with his son Animesh Kumar had stopped his motorcycle bearing registration No.JH-10AK-5762 in the evening of 26.02.2014 at Rajiv Gandhi Chowk, Govindpur, all of a sudden, a truck bearing registration No.WB-23B-0772, which was driven by its driver rashly and negligently came and dashed from behind to Balaram Mahato and his son along with motorcycle, as a result of which, Balaram Mahato and his son both sustained injury. The motorcycle was also badly damaged. Both were rushed to Jashlok Hospital, Govindpur. From there, his son Animesh Kumar was referred to Pragati Nursing Home, Saraidhela and Balaram Mahato was referred to Central Hospital, Dhanbad, where he was declared dead. The FIR of the said accident was registered as Govindpur P.S. Case No.112 of 2014 on 03.03.2014 under Sections 279, 337, 338, 304-A and 427 of the Indian Penal Code against the driver of the truck bearing registration No.WB-23B-0772. The Investigating Officer after concluding the investigation filed charge-sheet against the driver of the truck, namely, Satyendra Singh. The deceased was LIC Agent and was 50 years old on the date and time of accident. He was earning 15,58,434.45/- per year. Hence, compensation was

claimed.

3. Despite service of notice, the owner of the offending truck did not appear and the proceeding of claim petition was proceeded *ex-parte*.

4. The opposite party No.2-M/s Sriram General Insurance Company Limited filed the written statement with averments that the claim petition was not maintainable, the same was barred by non-joinder of necessary party. The age, occupation and the income of the deceased was denied and it was stated that the said accident was not caused on account of rash and negligent driving of the offending vehicle, indeed, it was a case of the contributory negligence. The driver of the offending truck was not having a valid and effective driving license. Consequently, the Insurance Company was not liable to pay any amount of compensation and the amount of compensation claimed was excessive. The responding Insurance Company reserves its right to contest the claim petition on all grounds, which is available to the owner of the truck in his failure to contest the same being in collusion of the claimant in view of Section 170 of the Motor Vehicles Act, 1988.

5. The learned Tribunal has framed altogether seven issues, which read as under:

“Issue No.1:- Whether the suit is maintainable in its present form?

Issue No.2:- Whether there is any cause of action for the present suit?

Issue No.3:-Whether the deceased died in motor accident due to rash and negligent driving of Truck bearing registration No.WB-23B-0772 by its driver?

Issue No.4:- Whether the driver of the Truck bearing registration No.WB-23B-0772 had valid and effective driving licence?

Issue No.5:- Whether the vehicle was insured during the period of motor accident?

Issue No.6:- What amount of compensation the plaintiffs are entitled for and from whom?

Issue No.7:- What other relief or reliefs the plaintiffs are entitled?

6. On behalf of the claimants, in documentary evidence filed **Exhibit-1,**

Certificate of LIC dated 27.01.2016; Exhibit-2, Form of 16(A) of LIC dated 30.04.2014; Exhibit-3, MDRD Certificate; Exhibit-4, Certificate of LIC dated 13.03.2014; Exhibit-5, Certificate of LIC earning details; Exhibit-6, Certified copy of FIR of Govindpur P.S. Case No.112 of 2014 dated 03.03.2014 corresponding to G.R. Case No.913 of 2014; Exhibit-7, Certified copy of charge sheet of above noted case; Exhibit-8, Photocopy of postmortem report; Exhibit-9, Photocopy of certificate of registration and; Exhibit-10, Photocopy of insurance policy of the offending truck. In oral evidence examined altogether three prosecution witnesses i.e. P.W.-1, Kavita Devi; P.W.-2, Sudip Kumar Mazumdar and; P.W.-3, Samant Kumar Patra.

7. On behalf of the opposite party, no evidence documentary as well as oral was produced.

8. The learned Tribunal after hearing the rival submissions of the learned counsel for the parties, passed the impugned award on 28.11.2016 and the amount of Rs.1,14,52,460/- was awarded in favour of the claimants against the appellant-Insurance Company along with SI @ 7% per annum from the date of filing of the claim petition till its realization and the Insurance Company was directed to deposit the same amount along with interest in the bank account of claimant within 60 days from the date of receipt of copy of the judgment.

9. Aggrieved from the impugned award dated 28.11.2016, the instant Miscellaneous Appeal has been directed on behalf of the appellant Sriram General Insurance Company Limited.

10. I have heard the learned counsel for the parties and perused the materials available on record.

11. Learned counsel for the appellant has assailed the award on the ground that the deceased was a LIC agent and after his death the renewal commission has been receiving by his wife claimant, who is also the LIC Commission Agent since the very lifetime of her husband. Indeed, there was no loss of dependency, as such, the impugned award passed by the learned Tribunal is based on perverse finding, therefore, contended to allow the appeal by setting aside the impugned award.

12. Per contra, the learned counsel for the claimants vehemently opposed the contentions made by the learned counsel for the appellant and contended that the appellant is not entitled to raise the plea in regard to the quantum of compensation. Since the owner of the offending vehicle despite service of notice did not appear and did not file the written statement, the appellant-Insurance Company cannot challenge the quantum of the award without any order on the application under Section 170 of the Motor Vehicles Act, 1988 to contest this appeal on those grounds which were available to the owner of the vehicle. Further, the learned counsel for the respondents-claimants also contended that the renewal commission is the hereditary commission and the same has no co-relation with the amount of compensation which was to be awarded after the death of the husband of the claimant. The said renewal commission was payable to the wife even if the death of her husband was otherwise, the same come under the heading of pecuniary advantage and cannot be deducted while making assessment of the compensation after the death of the deceased.

13. For disposal of this Miscellaneous Appeal, following points of determination is being framed:

(i) Whether this appeal is maintainable at the instance of

Insurance Company challenging the quantum of compensation without permission of the Tribunal under Section 170(b) of the Motor Vehicles Act, 1988.

(ii) Whether the claimants were not entitled to the compensation on account of death of deceased because of no loss of income for dependency.

Point of Determination No.I:-

13.1 The learned counsel for the appellant has submitted that the Insurance Company has pleaded in his written statement that the appellant-Insurance Company had reserved its right to contest the claim petition on all those grounds which were available to the owner of the vehicle in view of Section 170 of the Motor Vehicles Act, 1988, therefore, the appellant can assail this appeal on the point of quantum as well.

13.2 Learned counsel for the respondents-claimants has contended that neither the appellant had moved the application under Section 170 of the Motor Vehicles Act, 1988 nor the learned Tribunal has passed the order thereon. For lack of the same, the appellant is not authorized to contest this appeal on the point of quantum.

14. From the perusal of the written statement filed on behalf of the Insurance Company, it is found from **paragraph No.15** of the **written statement** that the Insurance Company has taken this plea that the defendant reserves its right to contest the claim on all the grounds which is available to the owner of the truck bearing registration No.WB-23B-0772 in case of his failure to contest or be in collusion with the plaintiffs as provided under **Section 170** of the **Motor Vehicles Act, 1988**. Further, from perusal of the order sheet of the **Title (M.V.) Suit No.107 of 2014**, it is evident that the **learned counsel for the defendant No.2** filed the petition under **Section 170 of the Motor Vehicles Act, 1988** for contesting the case on behalf of **the rest of the defendants**. A copy of the same had also been served to the

claimant and the learned Tribunal passed the order “the petition was formal in nature but no one appeared to object, hence, the application under Section 170 of the Motor Vehicles Act, 1988 is allowed”. It is also pertinent to mention that the application under Section 170 of the Motor Vehicles Act, 1988 was also moved by the Insurance Company prior to leading the evidence by parties in the claim petition.

14.1 Herein it would be pertinent to mention **Section 170** of the **Motor Vehicles Act, 1988**, which reads as under:

*“170. Impleading insurer in certain cases. - Where in the course of any inquiry, the Claims Tribunal is satisfied that
(a) there is collusion between the person making the claim and the person against whom the claim is made, or
(b) the person against whom the claim is made has failed to contest the claim, it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of [section 150], the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.*

14.2 The Hon’ble Apex Court in the case of **National Insurance Co. Ltd.**

Vs. Nicolletta Rohtagi reported in **(2002) 7 SCC 456** at paragraph Nos.25

and 26 held as under:

“25. We have earlier noticed that motor vehicle accident claim is a tortious claim directed against tortfeasors who are the insured and the driver of the vehicle and the insurer comes to the scene as a result of statutory liability created under the Motor Vehicles Act. The legislature has ensured by enacting Section 149 of the Act that the victims of motor vehicle are fully compensated and protected. It is for that reason the insurer cannot escape from its liability to pay compensation on any exclusionary clause in the insurance policy except those specified in Section 149(2) of the Act or where the condition precedent specified in Section 170 is satisfied.

26. For the aforesaid reasons, an insurer if aggrieved against an award, may file an appeal only on those grounds and no other. However, by virtue of Section 170 of the 1988 Act, where in course of an enquiry the Claims Tribunal is satisfied that (a) there is a collusion between the person making a claim and the person against whom the claim has been made, or (b) the person against whom the claim has been made has failed to contest the claim, the Tribunal may, for reasons to be recorded in writing, implead the insurer and in that case it is permissible for the insurer to contest the claim also on the grounds which are available to the insured or

to the person against whom the claim has been made. Thus, unless an order is passed by the Tribunal permitting the insurer to avail the grounds available to an insured or any other person against whom a claim has been made on being satisfied of the two conditions specified in Section 170 of the Act, it is not permissible to the insurer to contest the claim on the grounds which are available to the insured or to a person against whom a claim has been made. Thus, where conditions precedent embodied in Section 170 are satisfied and award is adverse to the interest of the insurer, the insurer has a right to file an appeal challenging the quantum of compensation or negligence or contributory negligence of the offending vehicle even if the insured has not filed any appeal against the quantum of compensation. Sections 149, 170 and 173 are part of one scheme and if we give any different interpretation to Section 173 of the 1988 Act, the same would go contrary to the scheme and object of the Act.”

14.3 The Hon’ble Apex Court in the case of *Jospfine James Vs. United India Insurance Co. Ltd. reported in (2013) 16 SCC 711* at paragraph Nos.20 and 21 held as under:

“ 20. The said order was reviewed by the High Court at the instance of the appellant in view of the aforesaid decision on the question of maintainability of the appeal of the Insurance Company. The High Court, in the review petition, has further reduced the compensation to Rs 4,20,000 from Rs 6,75,000 which was earlier awarded by it. This approach is contrary to the facts and law laid down by this Court. The High Court, in reducing the quantum of compensation under the heading of loss of dependency of the appellant, was required to follow the decision rendered by a three-Judge Bench of this Court in Nicolletta Rohtagi case and earlier decisions wherein this Court after interpreting Section 170(b) of the MV Act, has rightly held that in the absence of permission obtained by the Insurance Company from the Tribunal to avail the defence of the insured, it is not permitted to contest the case on merits. The aforesaid legal principle is applicable to the fact situation in view of the three-Judge Bench decision referred to supra though the correctness of the aforesaid decision is referred to larger Bench. This important aspect of the matter has been overlooked by the High Court while passing the impugned judgment and the said approach is contrary to the law laid down by this Court.

21. In view of the aforesaid reasons, the Insurance Company is not entitled to file an appeal questioning the quantum of compensation awarded in favour of the appellant for the reasons stated supra. In the absence of the same, the Insurance Company had only limited defence to contest in the proceedings as provided under Section 149(2) of the MV Act. Therefore, the impugned judgment passed by the High Court on 13-1-2012 reducing the compensation to Rs 4,20,000 under the heading of loss of dependency by deducting 50% from the monthly income of the deceased of Rs 5000 and applying a multiplier of 14, is factually and legally incorrect. The High Court has erroneously arrived at this amount by applying the principle of law laid down in Sarla Verma v. DTC_instead of applying the principle laid down in Baby Radhika Gupta case regarding the multiplier applied to the fact situation and also

contrary to the law applicable regarding the maintainability of appeal of the Insurance Company on the question of quantum of compensation in the absence of permission to be obtained by it from the Tribunal under Section 170(b) of the MV Act. In view of the aforesaid reason, the High Court should not have allowed the appeal of the Insurance Company as it has got limited defence as provided under Section 149(2) of the MV Act. Therefore, the impugned judgment and award is vitiated in law and hence, is liable to be set aside by allowing the appeal of the appellant.”

14.4 Since the appellant Insurance Company had moved the application under Section 170 of the Motor Vehicles Act, 1988 and the very application was allowed by the learned Tribunal, this appeal is very much maintainable which has been assailed on behalf of the appellant on the point of quantum as well. Accordingly, this point of determination is disposed of in favour of the appellant and against the respondent-claimant.

15. Point of Determination No.II:-

15.1 Learned counsel for the appellant has argued that the deceased was LIC agent and the income, which was on the date of accident, the same is being received continuously as renewal commission by the wife of the deceased and this fact is admitted in her cross-examination by **P.W.-1, Kavita Devi**, who is the wife of the deceased. Even **P.W.-3, Samant Kumar Patra** has also deposed the same fact, as such, there is no loss or income on account of dependency. The learned Tribunal has ignored this legal issue and passed the impugned award directing the Insurance Company to pay the amount of compensation Rs.1,14,52,460/- along with interest @ 7% per annum thereon.

15.2 On behalf of the respondent, learned counsel has vehemently opposed the contentions made by the learned counsel for the appellant and contended that the renewal commission, which is being received by the wife after death of her husband, the same was also payable to her even if death of her

husband was otherwise, as such, the same has no co-relation to the amount of compensation and the award passed by the learned Tribunal bears no infirmity and needs no interference, which has been rightly passed by the learned Tribunal. It is also further submitted that the Renewal Commission was the hereditary commission and deduction of the same cannot be made. In support of his argument, learned counsel for the respondents-claimants relied upon the judgment passed by the Hon'ble Division Bench of the Calcutta High Court in the case of *National Insurance Co. Ltd. v. Ayesha Sekh* reported in *(2015) 1 TN MAC 603 (DB) (Cal.)*.

16. On this very issue, on behalf of the appellant in oral evidence adduced altogether two prosecution witnesses i.e. **P.W.-1, Kavita Devi** and **P.W.-3, Samant Kumar Patra**. **P.W.-1, Kavita Devi**, in her examination-in-chief, has deposed that her husband was 50 years old. He was LIC Agent in Jodaphatak Raod, Dhanbad Branch-4, LIC and he had been doing work for last 24 years. He was very diligent and his income was enhancing every year on account of the very reason, Hazaribag Division, LIC has made him member of Million Dollar Round Table (MDRT). If he had not died, his income would have been enhanced. The claimant No.2, Priti, her daughter studying in Asansol Engineering College and the claimant No.3, Animesh Kumar, her son was the student of R.S. Mode College, Govindpur. In the very last year, when her husband died in accident, in the year 2013-14 the annual income of her husband was Rs.15,58,434.45/- and Rs.1,55,834/- was given income tax by him in one year. In cross-examination, this witness says that **she is LIC Agent prior to the death of her husband**. Her annual income is Rs.3 lakhs and she is also income tax payee. Her father-in-law was in service in BCCL, who had retired five years ago receiving pension. **Her**

husband was receiving commission and after his death, the same commission is being received by her. The yearly commission of her husband was Rs.6 Lakhs which she is getting now. Her husband was the member of MDRT.

16.1 P.W.-3, Samant Kumar Patra, who is the Development Officer, LIC of India Branch-4, Dhanbad has deposed by way of affidavit in his examination-in-chief that the original document (certificate No.1), which was generated in the name of Balaram Mahato on 27.01.2016 by LIC is system generated. In this certificate, the name of Balaram Mahato, his address, mobile number, date of appointment, date of receipt of PAN number, birth date etc. is mentioned. This certificate also bears the signature and seal of Branch Manager, Ashutosh Chandra. This certificate is of the financial year of 04.2013 to 03.2014. in this certificate, the income and the income tax audit is given. The gross income of the deceased was Rs.16,75,080.54/- and the income tax is Rs.1,67,508/-. This document is also signed by the Manager, Jai Prakash, which he identifies and marked Exhibit. The original certificate No.3 is in the name of Balaram Mahato on 17.02.2014, which was issued by the Senior Divisional Manager, Sri S.C. Joshi of LIC, Hazaribag Division. This certificate is issued by the agent who gives minimum premium in a year Rs.33 lakhs. This certificate is in seal and signature of M.C. Joshi, which he identifies and marked Exhibit-3. The original certificate No.4, LIC Branch Jodaphatak, Dhanbad was also the system generated issued on 13.03.2014 in regard to the financial year of 2012-13, in that financial year 2012-13, the gross income is shown Rs.14,36,115.91/- and the income tax was Rs.1,43,612/-, he identifies the same and marked Exhibit-4. **The income of the deceased Balaram Mahato**

was increased in the financial year 2012-13 amounting Rs.2,38,965/-. If he had been alive, his income would have been increased. This witness in cross-examination says that **the renewal commission is payable to the wife after the death the income of the LIC agent every year.**

16.2 From the meticulous analysis of the oral as well as documentary evidence on record, **admittedly the deceased was LIC Agent and he had been paying premium Rs.33 lakhs per year to the LIC Company, therefore, he was made member of MDRT.** In view of the testimony of **P.W.-3, Samant Kumar Patra, Development Officer, LIC of India Branch-4, Dhanbad** the income of the LIC vary every year and he has also deposed that from the financial year in comparison to 2012-13, the income of deceased in financial year 2013-14, in which, his death was caused on account of accident increased to the tune of Rs.2,38,965/-.

16.3 The bone of contention between the appellant and respondent is that the renewal commission, which the wife is still getting after the death of husband, the same could have been deducted from the income of the deceased or not.

16.4 The renewal commission is the hereditary commission and the same is also payable to the widow of deceased even after the death is otherwise. As such, this renewal commission is hereditary commission and the same comes under the pecuniary advantage, which is payable after the death of her husband in very case where the death is natural, homicidal or accidental.

16.5 The Hon'ble Division of Calcutta High Court in the case of *National Insurance Co. Ltd. v. Ayesha Sekh* reported in *(2015) 1 TN MAC 603 (DB) (Cal.)* held that the fixation of the income without hereditary commission

receivable by the legal representative upon the death of LIC agent is not proper. Since hereditary commission receivable by the legal heir of deceased has no nexus with the accident and would have been receivable even if the death was otherwise. **Paragraph Nos.12 to 16** read as under:

*“12. Upon the consideration of the rival submissions and the sole point of law this Court notices the Judgment of the Hon'ble Apex Court in **Helen C. Rebello v. Maharashtra State Road Transport Corporation, 1999 (1) SCC 90.** In Helen C. Rebello v. Maharashtra State Road Transport Corporation, 1999 (1) SCC 90, the Hon'ble Apex Court was pleased to consider the general principle of estimating damages under the common law qua the “Pecuniary advantage” which accrues to the Claimants solely on account of the death of the victim.*

13. The Hon'ble Apex Court in Helen C. Rebello v. Maharashtra State Road Transport Corporation, 1999 (1) SCC 90, inter alia, held that under the Motor Vehicles Act an amount receivable by the Claimant not on account of the accidental death but, otherwise on the death of the insured person, will not come under the meaning of “Pecuniary advantage” which is liable for deduction. In the words of the Hon'ble Apex Court death, which is not accidental, “is only a step or contingency in terms of the contract, to receive the amount”. Therefore, the Hon'ble Apex Court found that benefits attributable to provident fund or Life Insurance Policy will not come under the purview of accidental death benefits and hence, will not be liable for deduction while calculating Compensation for motor accident deaths.

14. At Paragraphs 32, 33 & 35 of Helen C. Rebello v. Maharashtra State Road Transport Corporation, 1999 (1) SCC 90, the Hon'ble Apex Court held as follows:

“(32) So far as the general principle of estimating damages under the common law is concerned, it is settled that the Pecuniary loss can be ascertained only by balancing on one hand, the loss to the Claimant of the future Pecuniary benefits that would have accrued to him but for the death with the “Pecuniary advantage” which from whatever source comes to him by reason of the death. In other words, it is the balancing of loss and gain of the Claimant occasioned by the death. But this has to change its colour to the extent a statute intends to do. Thus, this has to be interpreted in the light of the provisions of the Motor Vehicles Act, 1939. It is very clear, to which there could be no doubt that this Act delivers Compensation to the Claimant only on account of accidental injury or death, not on account of any other death. Thus, the Pecuniary advantage accruing under this Act has to be deciphered, correlating with the accidental death. The Compensation payable under the Motor Vehicles Act is on account of the pecuniary loss to the Claimant by accidental injury or death and not other forms of death. If there is natural death or death by suicide, serious illness, including even death by accident, through train, air flight not involving a motor vehicle, it would not be covered under the Motor Vehicles Act. Thus, the Application of the general principle under the common law of loss and gain for the computation of Compensation under this Act must correlate to this type of injury or death, viz., accidental. If the words “Pecuniary advantage”

from whatever source are to be interpreted to mean any form of death under this Act, it would dilute all possible benefits conferred on the Claimant and would be contrary to the spirit of the law. If the Pecuniary advantage” resulting from death means Pecuniary advantage coming under all forms of death then it will include all the assets moveable, immovable, shares, Bank accounts, cash and every amount receivable under any contract. In other words, all heritable assets including what is willed by the deceased, etc. This would obliterate both, all possible conferment of economic security to the Claimant by the deceased and the intentions of the legislature. By such an interpretation, the tortfeasor in spite of his wrongful act or negligence, which contributes to the death, would have in many cases no liability or meagre liability. In our considered opinion, the general principle of loss and gain takes colour of this statute, viz., the gain has to be interpreted which is as a result of the accidental death and the loss on account of the accidental death. Thus, under the present Act, whatever Pecuniary advantage is received by the Claimant, from whatever source, would only mean which comes to the Claimant on account of the accidental death and not other forms of death. The constitution of the Motor Accident Claims Tribunal itself under Section 110 is, as the Section states:

“...for the purpose of adjudicating upon claims for Compensation in respect of accidents involving the death of, or bodily injury to, ...”.

(33) Thus, it would not include that which the Claimant receives on account of other forms of deaths, which he would have received even apart from accidental death. Thus, such Pecuniary advantage would have no correlation to the accidental death for which Compensation is computed. Any amount received or receivable not only on account of the accidental death but that which would have come to the Claimant even otherwise, could not be construed to be the “Pecuniary advantage”, liable for deduction.”

15. The principle of paying Compensation underscored in Helen C. Rebello v. Maharashtra State Road Transport Corporation, 1999 (1) SCC 90, was reiterated by the Hon'ble Apex Court in United India Insurance Co. Ltd. v. Patricia Jean Mahajan, 2002 (2) T.A.C. 721 (SC). While disallowing any deduction from the Compensation on account of receipts of Insurance Policy and Social Security benefits by the Claimants the Hon'ble Apex Court in United India Insurance Co. Ltd. v. Patricia Jean Mahajan, 2002 (2) T.A.C. 721 (SC), held at Paragraph 34 as follows:

“(34) We feel that the High Court has rightly disallowed any deduction on account of receipts under the Insurance Policy and other receipts under Social Security system which the Claimant would have also otherwise entitled to receive irrespective of accidental death of Dr. Mahajan. If the proposition “receipts from whatever source” is interpreted so widely that it may cover all the receipts, which may come into the hands of the Claimants, in view of the mere death of the victim, it would only defeat the purpose of the Act providing for just Compensation on account of accidental death. Such gains may be on account of savings or other investment, etc. made by the deceased would not go to the benefit of wrong doer and the Claimant should not be left worse off, if he had never taken an Insurance Policy or had not made investments for future returns.”

16. This Court is in respectful agreement with the proposition of

law underscored in both Helen C. Rebello v. Maharashtra State Road Transport Corporation, 1999 (1) SCC 90; and United India Insurance Co. Ltd. v. Patricia Jean Mahajan, 2002 (2) T.A.C. 721 (SC). This Court is therefore of the considered opinion that the Hereditary Commission receivable by the Claimants cannot be said to have any nexus with the accident and would have been receivable by the Claimants even otherwise on the death of the victim. While it is no doubt true that the receipt of the Hereditary Commission was accelerated due to the premature death of the victim, even then the Commission cannot be said to have any nexus with the accident.”

16.6 From the materials available on record, to rebut the evidence adduced on behalf of the claimants, no contrary evidence oral as well as documentary was adduced on behalf of the Insurance Company-appellant herein. As such, the findings recorded by the learned Tribunal on this very issue is based on proper appreciation of evidence on record and the same needs no interference. **Accordingly, this point of determination is disposed of against the appellant-Insurance Company and in favour of the respondents-claimants. The renewal commission is hereditary commission and the same is not deductible while fixing the income of deceased LIC Agent.**

17. In view of the appraisal of the oral as well as documentary evidence on record and also the settled legal propositions of law as laid down by the Hon’ble Apex Court, the impugned award passed by the learned Tribunal needs no interference and this appeal deserves to be dismissed.

18. Accordingly, the instant Miscellaneous Appeal is **dismissed** and the impugned award dated 28.11.2016 passed by the learned District Judge-III-cum- M.A.C.T., Dhanbad in Title (M.V.) Suit No. 107 of 2014 is **confirmed**.

19. Let the learned Tribunal be communicated in regard to this judgment.

The statutory amount, if any, be sent back to the learned Tribunal.

(Subhash Chand, J.)

Jharkhand High Court, Ranchi
Dated: the 28 November, 2024,
Madhav/- **A.F.R.**